

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

FILED

United States District Court		District Massachusetts IN CLERK'S OFFICE
Name Tihisi Williams	Prisoner No.	Case No. 2003 DEC -8 A 11: 27
Place of Confinement Boston Pre-Release Center	U.S. DISTRICT COURT DISTRICT OF MASS. AMOUNT \$ 5,000	
Name of Petitioner (include name under which convicted) Tihisi Williams	Name of Respondent (authorized person having body of petitioner) Linda Bardee LR OF SERV.	
The Attorney General of the State of: Massachusetts	LOCAL RULE 4.1 ISSUED TO OR 121 CLERK S 12-8-2003	
03-125 PETITION		
<p>1. Name and location of court which entered the judgment of conviction under attack Suffolk Superior Court 90 Devonshire St., Room 607, Boston, MA 02109</p> <p>2. Date of judgment of conviction May 1, 2000</p> <p>3. Length of sentence 10 years (2 consecutive sentences of 3-5 years each)</p> <p>4. Nature of offense involved (all counts) Murder-not guilty; assault by means of a dangerous weapon-guilty; assault by means of a dangerous weapon-guilty.</p> <p>5. What was your plea? (Check one) (a) Not guilty <input checked="" type="checkbox"/> (b) Guilty <input type="checkbox"/> (c) Nolo contendere <input type="checkbox"/></p> <p>If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: <hr/> <hr/></p> <p>6. If you pleaded not guilty, what kind of trial did you have? (Check one) (a) Jury <input checked="" type="checkbox"/> (b) Judge only <input type="checkbox"/></p> <p>7. Did you testify at the trial? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>8. Did you appeal from the judgment of conviction? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>		

9. If you did appeal, answer the following:

- (a) Name of court Massachusetts Appeals Court
- (b) Result Affirmed
- (c) Date of result and citation, if known October 4, 2002 - unpublished
- (d) Grounds raised Error on jury instructions on assault by means of a dangerous weapon; erroneous denial of motion for required finding of not guilty

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

- (1) Name of court Massachusetts Supreme Judicial Court
- (2) Result further appellate review denied
- (3) Date of result and citation, if known December 5, 2002
- (4) Grounds raised Violation of due process of law by affirming conviction on theory not presented to trial court of jury and on facts unsupported by record.

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

- (1) Name of court N/A
- (2) Result _____
- (3) Date of result and citation, if known _____
- (4) Grounds raised _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?
Yes No

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court _____
- (2) Nature of proceeding _____
- (3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes No

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Name of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes No

(5) Result _____

(6) Date of result _____

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes No

(2) Second petition, etc. Yes No

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was constitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: The Massachusetts Appeals Court violated Petitioner's Due Process rights by affirming his conviction on a theory not relied on by the Commonwealth in Petitioner's trial, in violation of clearly established federal law.

Supporting Facts: The appeals court affirmed the conviction by theorizing that the jury could find an assault based on an interrupted crime. That theory, which requires an overt act toward committing a battery, was never argued by or relied on by the Commonwealth, which did not allege or argue assault by means of an attempted battery, but relied on a theory of assault based on placing one in fear of imminent harm, without the need for evidence of an attempted battery. The jury was not charged on a theory of assault based on an interrupted crime. All as more fully set forth in the accompanying memorandum.

B. Ground two: The appeals court violated Petitioner's Due Process rights by affirming his conviction on facts not found, and in part rejected by the jury, and which were totally unsupported by the record. Thus, the appeals court's decision was based on an unreasonably determination of the facts in light of the evidence presented.

Supporting Facts: The appeals court's factual finding of an interrupted crime, an overt act toward commission of that crime, and a joint venture to kill the victim were totally unsupported by the record. The jury rejected the joint enterprise theory, and no facts were presented by and the Commonwealth did not argue the existence of an interrupted crime, and no facts of an overt act toward harming the victim were presented or argued to the jury. All as more fully set forth in the accompanying memorandum.

C. Ground three: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

D. Ground four: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes No

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing _____

(b) At arraignment and plea John H. Cunha, Jr., One State Street, Suite 500
Boston, MA 02109

- (c) At trial John H. Cunha, Jr., One State Street, Suite 500, Boston
MA 02109
- (d) At sentencing John H. Cunha, Jr. One State Street, Suite 500,
Boston, Ma 02109
- (e) On appeal Stewart T. Graham, Jr. 39 Burleigh Road, Hampden
MA 01036
- (f) In any post-conviction proceeding _____
- (g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes No

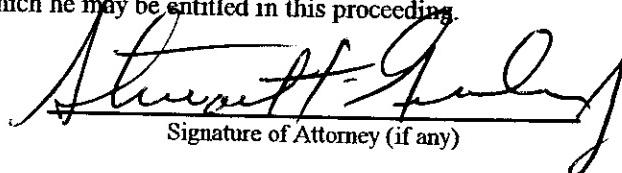
(a) If so, give name and location of court which imposed sentence to be served in the future: same court and
same proceeding - indictment # 98-10986-003

(b) Give date and length of the above sentence: 3-5 years consecutive to indictment
98-10986-002

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes No

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.



Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

11/28/03
Date



Signature of Petitioner